

*Response Under 37 CFR § 1.116 \* -- Expedited Procedure -- Examining Group 3634  
Docket No.: 1791.003  
Serial Number: 10/074,713*

### **REMARKS**

Without acquiescing to the propriety of the rejections in the Office Action dated December 11, 2004, claims 1, 4-5, 7-10, 12-13 and 15 have been amended. Claims 2-3, 6 and 16-19 have been cancelled. Claims 20-22 have been withdrawn by the Office Action and new claims 23-25 have been added. Entry of these amendments, reconsideration of the application and allowance of all claims pending herein is respectfully requested in view of the remarks below. Claims 1, 4-5, 7-15 and 23-25 are currently pending and under consideration.

#### **Section 112 Rejections**

Claim 9 stands rejected under 35 U.S.C. § 112 as containing subject matter which was not described in the specification to convey to one skilled in the art that the inventor had possession of the invention at the time of the filing of the application. Specifically, the "means for inhibiting ... a side of said means for movably attaching ... from rising above a position substantially orthogonal to the mast" is allegedly not described in the specification.

As noted in the last Response, page 5 of the specification describes an angle-maintaining member 25 which maintains mast-attaching member 20 at an angle oblique to a mast 30. Specifically, it is stated that mast-attaching member 20 may be held by angle-maintaining member 25 such that a first end 120 of mast-attaching member 20 is lower than a second end 130 thereof and further first end 120 may be maintained such that it does not rise above a point wherein mast-attaching member 20 is substantially perpendicular to mast 30. It is respectfully submitted that such description along with original claim 9, which provides its own support, describes an angle-maintaining member which inhibits a side of mast-attaching member 120 from rising above a position substantially orthogonal to a mast. Thus, it is believed that this rejection is overcome.

Claims 1, 4, 5, 7-13 and 15 stand rejected under 35 U.S.C. Section 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention. Specifically, the phrases "configured to" in claims 1, 12 and 13 are alleged to be vague since it is unclear what the configurations are which slow, cause and receive, respectively.

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Claim 1 has been amended to recite that a brake is configured to slow a descent of the bosun's chair. It is respectfully submitted that it would be clear to one of ordinary skill in the art that a brake slows or brakes an object and thus the brake recited in claim 1 would be understood to slow the descent of the bosun's chair. Claim 12 has also been amended to recite that a brake brakes a mast-attaching member in response to a force being applied to an activation member. It is respectfully submitted that the figures and paragraph 14 of the specification, for example, make clear that a weight being applied to the activation member causes the brake to abut the mast to slow a descent of the mast-attaching member and thus the bosun's chair. The configuration, arrangement, or attachment of the activation member to the mast-attaching member and the brake allows such slowing of the mast-attaching member. Accordingly, this rejection is believed to be overcome.

#### **Section 102 Rejections**

Claims 1, 4, 5, 8-10, 12 and 15 stand rejected under 35 U.S.C. 102(b) as being clearly anticipated by Erickson (U.S. Patent No. 4,694,934). Erickson is alleged to disclose a brake, means for supporting, means for attaching, means for movably attaching and an activation member.

Claim 1 of the present application now recites a safety device for a bosun's chair which includes a mast-attaching member configured to moveably attach the bosun's chair to the mast, a brake for braking the mast-attaching member, and means for at least one of raising and lowering the bosun's chair. The brake is configured to slow a descent of the bosun's chair in response to a failure of the means for at least one of raising and lowering the bosun's chair, wherein the brake is separate from the means for at least one of raising and lowering.

Erickson discloses a portable elevating device which includes an anchor 12 which has legs 30, 32 and 34 configured to be secured to a tree. Anchor 12 is attached to a tree using a member 42 (e.g., a telescopic pole) which positions anchor 12 in a vertical position. After anchor 12 is vertically placed by member 42, a user may ascend the tree by operating a winch attached to an apparatus 10 in which the user is received. The winch is part of apparatus 10 and is attached to anchor 12 by a cord 97. Another cord 100 may be attached to a second attachment position spaced from anchor 12 to provide support to the user in the event that cord 97 or anchor 12 fails, as described in column 6. However, Erickson does not disclose a brake configured to slow a descent of a bosun's chair in response to a failure of means for at least one

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of raising and lowering the bosun's chair when the brake and the means for at least one of raising and lowering are separate. Instead, the alleged brake (i.e., anchor 12) is part of the raising and lowering system. More specifically, anchor 12 is attached to a tree and the winch allows a user to be raised toward or lowered away from anchor 12, but anchor 12 is integral to such raising and lowering of the user. This contrasts with the means for at least one of raising and lowering the bosun's chair recited in claim 1, which is separate from the brake recited therein. Also, cord 100 in Erickson cannot be considered to be a means for raising or lowering, which is separate from anchor 12, because cord 100 does not raise or lower. Instead, the winch attached to apparatus 10 raises and lowers, and cord 100 may be captured by a rope gripping portion of apparatus 10 to slow a descent of a user when an opposite end of rope 100 is attached in an elevated position and anchor 12 or cord 97 fails. Thus, because the features of claim 1 of the present application (e.g., a separate brake and means for at least one of raising and lowering a bosun's chair) are not identically disclosed by Erickson, this claim cannot be anticipated thereby. The dependent claims are believed not to be anticipated for the same reasons and for their own additional features.

New claim 23 of the present application recites a safety device for a bosun's chair which includes a mast-attaching member movably attached to a mast, an activation member couplable to a bosun's chair, and a brake configured to brake the bosun's chair relative to the mast. Further, the brake is coupled to the activation member and the mast-attaching member. The activation member is pivotally connected to the mast-attaching member and configured to cause the brake to contact the mast to slow a descent of the mast-attaching member and the bosun's chair in response to the activation member being coupled to the bosun's chair and a force being placed on the activation member by the bosun's chair. The brake is configured to allow movement of the mast-attaching member relative to the mast in response to a lack of the force.

As noted above, Erickson discloses a portable elevating device which includes anchor 12 configured to be secured to a tree. However, there is no disclosure of an activation member pivotally connected to a mast-attaching member, nor a brake pivotally connected thereto. Instead, this reference discloses anchor 12 which is configured to surround a portion of a tree and which includes a member 14 for being secured to a cable, which is secured on its other end to apparatus 10 for supporting a person, but member 14 is not pivotally connected to the remainder of anchor 12. Thus, because the features of claim 23 (e.g., an activation member pivotally attached to a mast-attaching member) of the present application are not identically

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disclosed by Erickson, this claim cannot be anticipated thereby. The dependent claims are believed not to be anticipated for the same reasons and for their own additional features.

**Section 103 Rejections**

Claim 7 stands rejected under 35 U.S.C. 103(a) as being obvious over Erickson in view of Skinner. Also, claim 11 stands rejected under 35 U.S.C. 103(a) as being obvious over Greenway in view of Erickson.

These rejections rely on the Section 102 rejection of their base, independent claim 1. As described above, independent claim 1 is believed to be allowable, and thus these dependent claims are believed to be allowable for the same reasons and for their own additional features.

**Constructive Restriction**

Claims 20-22 were withdrawn from consideration because it was alleged that they were directed to a combination of safety device and a bosun's chair and that such combination (i.e., claim 20) was originally presented in the last Response. Further, the combination was alleged to be distinct from the sub-combination recited in claim 1, because the combination of claim 20 (stated in the Office Action to be a sub-combination) allegedly does not require a means for supporting and a separate braking means which reacts to a failure of a means for supporting. Applicant respectfully traverses this restriction.

The Office Action alleges that claims 20-22 were newly submitted, but in fact claim 20 was amended and claims 21 and 22 were new. MPEP § 821.03 allows new claims to be withdrawn from consideration if they are directed to a non-elected invention. As noted above, claim 20 was not new and thus is not subject to this section. Claim 20 was amended to recite a bosun's chair, but the bosun's chair was previously presented in this claim as a work piece, i.e., the brake was recited to brake the bosun's chair relative to a mast. The mere recitation of the bosun's chair as an element of this claim does not result in a different invention.

Further, restriction between a sub-combination which is not essential to the combination may be proper "if reasons exist for insisting upon the restriction; i.e., separate classification status for a field of search." MPEP § 806.05(c)(I). Such a restriction is proper if the sub-combination recited in combination claim is broadly recited and such sub-combination is more

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narrowly recited in the sub-combination claim. In the present application, the safety device recited in previous claims 1 and 20 recite different aspects, neither of which is more broad than the other. In particular, claim 1 recites, *inter alia*, a brake which is separate from a means for supporting a bosun's chair. Claim 20 recites, *inter alia*, a brake coupled to an activation member and a mast-attaching member, wherein the brake is configured to slow a descent of the mast-attaching member and a bosun's chair in response to a force being placed on the activation member by the bosun's chair. Thus, a recitation of the safety device in the alleged sub-combination of claim 1 is not narrower than that recited in claim 20. Instead, these claims recite different features of a safety device for a bosun's chair, but the claims do not recite different scopes, i.e., one is not broader or narrower than the other. Thus, the alleged sub-combination is not broadly recited in claim 20 and more narrowly recited in claim 1 as is required for a proper restriction. Accordingly, it is respectfully submitted that the constructive election outlined in the last Response is improper and it is respectfully requested that the constructive restriction be reversed.

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**CONCLUSION**

In view of the above amendment and remarks, applicant respectfully requests allowance of all claims pending herein.

If a telephone conference would be of assistance in advancing prosecution of the subject application, the Examiner is invited to telephone the undersigned attorney at the telephone number provided.

***Respectfully submitted,***



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